

**PHILIP EARL BARRICKLOW**  
Claimant

**R & C PROFESSIONAL SERVICES**  
Respondent

**HIGHLANDS INSURANCE CO.**  
Insurance Carrier

## ORDER

## APPEARANCES

## RECORD AND STIPULATIONS

## ISSUES

The sole issue raised on review by the claimant is the nature and extent of claimant's disability. Claimant argues that as a result of the injury to his right knee he

gradually developed back and left lower extremity problems. Accordingly, claimant argues he should not be limited to a scheduled disability and instead has suffered a whole body injury. Claimant further argues he is entitled to an 88 percent work disability based on a 76 percent task loss and a 100 percent wage loss.

Respondent points out that both the treating physician and the court ordered independent medical examiner concluded claimant's accidental injury resulted in permanent impairment to only the right lower extremity. Respondent argues the claimant's award of compensation should be reduced to a 2 percent impairment to the right lower extremity based on the court ordered independent medical examiner's rating.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Award should be affirmed. The Board agrees with the ALJ's analysis of the evidence as set forth in the Award.<sup>1</sup> The Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein.

Philip Barricklow was employed by respondent as a working foreman performing plumbing work. On October 3, 2001, claimant was carrying his tools while stepping up on a 30-inch concrete slab when his right knee gave out and he fell forward onto his face. Claimant reported the injury and was referred for treatment.

An MRI was performed which revealed the claimant had a torn meniscus. So claimant was referred to Dr. Daniel J. Prohaska. On October 24, 2001, claimant was examined by Dr. Prohaska and was diagnosed with a medial meniscus tear of the right knee due to his work-related injury on October 3, 2001. On October 30, 2001, Dr. Prohaska performed a meniscectomy on claimant's right knee. After the arthroscopic surgery, the claimant developed patellar tendonitis. On June 24, 2002, Dr. Prohaska performed a micro-debridement of the patellar tendonitis.

Dr. Prohaska testified the claimant did not complain of any left knee or right hip pain between the two surgeries. Claimant was released by Dr. Prohaska on January 28, 2003. Dr. Prohaska testified that the first time the claimant indicated to the doctor that his left knee was hurting was on May 8, 2003. Dr. Prohaska found no causal relationship between his left knee complaints and the injury that occurred on October 3, 2001. Based on the

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<sup>1</sup> It should be noted that the ALJ adopted the independent medical examiner's ratings to the right lower extremity. However, on page 5 of the Award when the ALJ adopts those findings the decision reads that the "Court finds that the Claimant has a nine percent impairment to his left leg." This reference to the left leg was clearly a typographical error.

AMA *Guides*<sup>2</sup>, Dr. Prohaska opined the claimant had a 3 percent lower extremity impairment.

At claimant's attorney's request, Dr. Pedro A. Murati performed a physical examination and evaluation of the claimant on both March 24, 2003, and September 16, 2003. Claimant complained of pain in both knees, right hip and his low back. Dr. Murati diagnosed the claimant with right knee pain secondary to status post medial meniscectomy, right knee status post micro-debridement of patellar tendonitis, low back pain secondary to antalgia with radiculopathy, and left knee pain secondary to patella tendonitis. Dr. Murati opined the claimant's condition was a direct result of his work-related injury that occurred on October 3, 2001.

Dr. Murati opined the claimant has a 10 percent whole person impairment based on his low back pain secondary to radiculopathy, a 20 percent right lower extremity impairment due to the 10 degrees flexion contracture of the right knee, a 2 percent right lower extremity impairment due the S/P right knee meniscectomy. Using the Combined Values Chart, these right lower extremity impairments combine for a 22 percent right lower extremity impairment which converts to a 9 percent whole person impairment. Claimant further received 13 percent left lower extremity impairment for the 2.1 cm of atrophy which converts to a 5 percent whole person impairment. Combining the whole person impairments, the claimant suffered a 22 percent whole person functional impairment.

The ALJ ordered Dr. Robert A. Rawcliffe Jr. to perform an independent medical examination of claimant for treatment recommendations regarding claimant's bilateral knee complaints as well as an opinion regarding causation for claimant's left knee complaints.

Dr. Rawcliffe opined the claimant has had a gradual development of osteoarthritis over a period of years which was permanently aggravated by his work-related injury on October 3, 2001. Dr. Rawcliffe rated the claimant's right lower extremity at 2 percent due to the medial meniscectomy. The doctor also rated the claimant's preexisting arthritis at 7 percent due to the narrowing of the cartilage interval in the right lower extremity. The doctor concluded the impairment directly related to the accident was limited to the 2 percent to the right lower extremity. Although Dr. Rawcliffe concluded the preexisting arthritis was not caused by the accident, the ALJ noted claimant's right lower extremity had been asymptomatic before the accident. Consequently, the ALJ concluded that because a preexisting condition had been permanently aggravated, the doctor's 7 percent rating was included with the 2 percent to arrive at the 9 percent awarded.

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<sup>2</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Initially, it must be determined whether claimant suffered scheduled or non-scheduled injuries as a result of his work-related accident on October 3, 2001. The Act recognizes two different classes of injuries which do not result in death or total disability. An injured employee may suffer a permanent disability to a scheduled body part or a permanent partial general disability.<sup>3</sup> It is the situs of the disability, not the situs of the trauma, that determines which benefits are available.<sup>4</sup> The Board, as a trier of fact, must decide which testimony is more accurate and/or more credible and must adjust the medical testimony along with the testimony of the claimant and any other testimony that might be relevant to the question of disability.<sup>5</sup>

As the ALJ noted, the claimant told the treating physician that the onset of his left knee pain was just a few months before May 8, 2003. The treating physician noted that the May 8, 2003 date was the first time claimant had made any complaints of such pain. However, when claimant was examined by Dr. Murati on March 24, 2003, he gave a different history of an onset of left knee and low back pain shortly after the October 3, 2001 injury.

The treating physician, Dr. Prohaska and the court ordered independent medical examiner, Dr. Rawcliffe, both concluded claimant's permanent impairment as a result of his work-related injury was limited to his right lower extremity. The ALJ concluded claimant's permanent impairment was limited to his right lower extremity. The Board adopts that finding and affirms.

The Board further adopts the ALJ's analysis that because claimant's accident permanently aggravated his preexisting arthritis it was appropriate to include Dr. Rawcliffe's 7 percent rating for that condition with the doctor's 2 percent rating for the medial meniscectomy. Consequently, the Board affirms the ALJ's finding claimant suffered a 9 percent scheduled disability to the right lower extremity.

### **AWARD**

**WHEREFORE**, it is the finding of the Board that the Award of Administrative Law Judge John D. Clark dated June 25, 2004, is affirmed.

**IT IS SO ORDERED.**

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<sup>3</sup> K.S.A. 44-510d; K.S.A. 44-510e.

<sup>4</sup> *Bryant v. Excel Corp.*, 239 Kan. 688, 722 P.2d 579 (1986).

<sup>5</sup> *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

Dated this \_\_\_\_\_ day of December 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant  
Seth G. Valerius, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director